

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

February 25, 2011

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawai'i

Board Members:

SUBJECT: REQUEST FOR APPROVAL OF GRANT OF TWO ACCESS AND UTILITY EASEMENTS BY THE MAUI COASTAL LAND TRUST OVER A PORTION OF TAX MAP KEY (2) 3-2-010:001, SITUATE AT WAIHEE AND WAIHEHU, WAILUKU, MAUI, WHICH IS ENCUMBERED BY A CONSERVATION EASEMENT; POSSIBLE EXECUTIVE SESSION PURSUANT TO HAWAII REVISED STATUTES SECTION 92-5(a)(4)

BACKGROUND: On June 18, 2004, the Board granted approval to the Department of Land and Natural Resources ("Department") to enter into a Memorandum of Agreement between the Department, the County of Maui ("County"), and the Maui Coastal Land Trust ("MCLT") for the purchase and management of the Waihee Wetland and Coastal Dune property ("Property"). Under the Agreement, the Department secured federal funds in the form of a Recovery Land Acquisition grant to assist MCLT in the purchase and management of the Property as a conservation area for open space, native wildlife habitat, cultural resources, coastal resources and passive public recreation. The County of Maui also contributed funds to assist in the purchase. In exchange, MCLT provided the State, through the Department, and the County with a conservation easement to ensure protection of the Property in perpetuity. The Deed of Conservation Easement and Development Rights was recorded on October 22, 2004.

On November 12, 2008, a quiet title action was filed by Donna P. Ting and Allen Young Ting III, as trustees, property owners of a kuleana parcel identified as TMK No. (2) 3-2-011:072 (Ting v. Heirs and Assigns of Mahoe, Civil No. 07-1-0171(1)). The plaintiffs seek, among other things, an easement for access and utilities over the Property. On January 20, 2011, the court granted the State of Hawaii's motion to intervene in the quiet title action for the sole purpose of protecting its interests in the conservation easement that encumbers the Property. Under the conservation easement deed, approval by the State and County of the proposed easements discussed below is required and the State and County have the right to impose reasonable conditions.

As a settlement of the access and utility issue in the lawsuit, the plaintiffs have proposed two easements over a portion of the Property. On the map attached as Exhibit A, the location of one

of the proposed easements is marked in blue, the other easement identified in green. The reason that two separate easements are being sought is that the owners of parcel TMK no. (2) 3-2-011:004 (adjoining plaintiffs' parcel 072 and the Property) have constructed their residence in close proximity to their requested access easement (marked in blue). They are concerned that sharing the access easement with the owner of parcel 072 would create a potential nuisance, as car headlights would shine into their residence at night.

DISCUSSION: The portion of the Property over which the proposed easements would run has been identified as konohiki land encumbered by a kuleana right of access under Hawaii Revised Statutes, section 7-1. MCLT, fee owner of the Property, does not object to granting the easements. MCLT states that the subject area does not have the features that are intended to be protected under the conservation easement and consenting to the two proposed access and utility easements are necessary to maintain good neighbor relations. On the tax map attached as Exhibit B, the highlighted area shows the location of the kuleana parcels in relation to the rest of the Property, identified as parcel 001.

DLNR staff does not object to the granting of the two proposed access and utility easements by MCLT, but believe that the Board's approval should be subject to the following conditions:

1. The access and utility easements shall be limited to residential transit and utility purposes only, and shall not allow any parking or storage or commercial use.
2. Grantees shall not allow the introduction of non-native plants or animals into any part of the land under the conservation easement.
3. Any animals owned or cared for by Grantees may cross the access easements only if they are under adequate physical restraint, such as in a car or on a leash, at all times.
4. Grantees shall comply with all laws applicable to the land under the conservation easement.
5. In the event a Grantee fails to comply with conditions nos. 1, 2, 3, or 4 above, the Grantee shall be responsible for (a) any damages caused by or related to the introduced non-native plant or animal, any animal not adequately restrained, and any unauthorized use of the easement or land under the conservation easement; (b) the removal of the non-native plant or animal and any other remedial measures required by the State of Hawaii; (c) any and all other damages; and (d) any penalties provided and imposed by law.
6. Grantees shall be responsible for all fees, including attorney's fees, and costs resulting from or related to any investigation or enforcement action undertaken by the State of Hawaii in regard to the conditions above.
7. The State of Hawaii shall be protected by indemnity and defense provisions in the easement document and shall be included as an additional insured on the grantees' insurance policies.

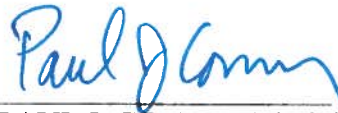
The Department has particular concerns about the potential introduction of non-native plant and animal species into the Property's environment, threatening its natural resources values. The Department believes that imposing the conditions listed above will assist in both preventing and mitigating harm.

RECOMMENDATIONS:

That the Board:

1. Approve the proposed access and utility easements subject to the terms and conditions cited above which are by this reference incorporated herein.
2. Authorize the Chairperson, through the Department of Attorney General, to negotiate the terms and conditions of the proposed access and utility easements subject to the terms and conditions cited above and such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the Chairperson to execute appropriate documents.

Respectfully submitted,

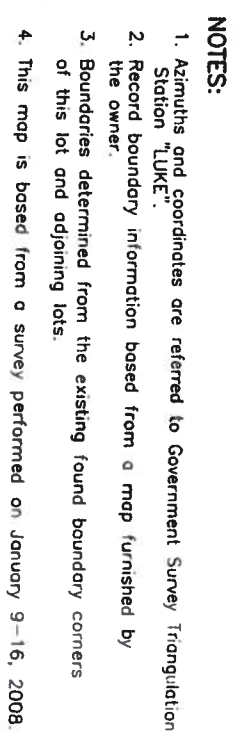


PAUL J. CONRY, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:




WILLIAM J. AILA, JR., Interim Chairperson
Board of Land and Natural Resources



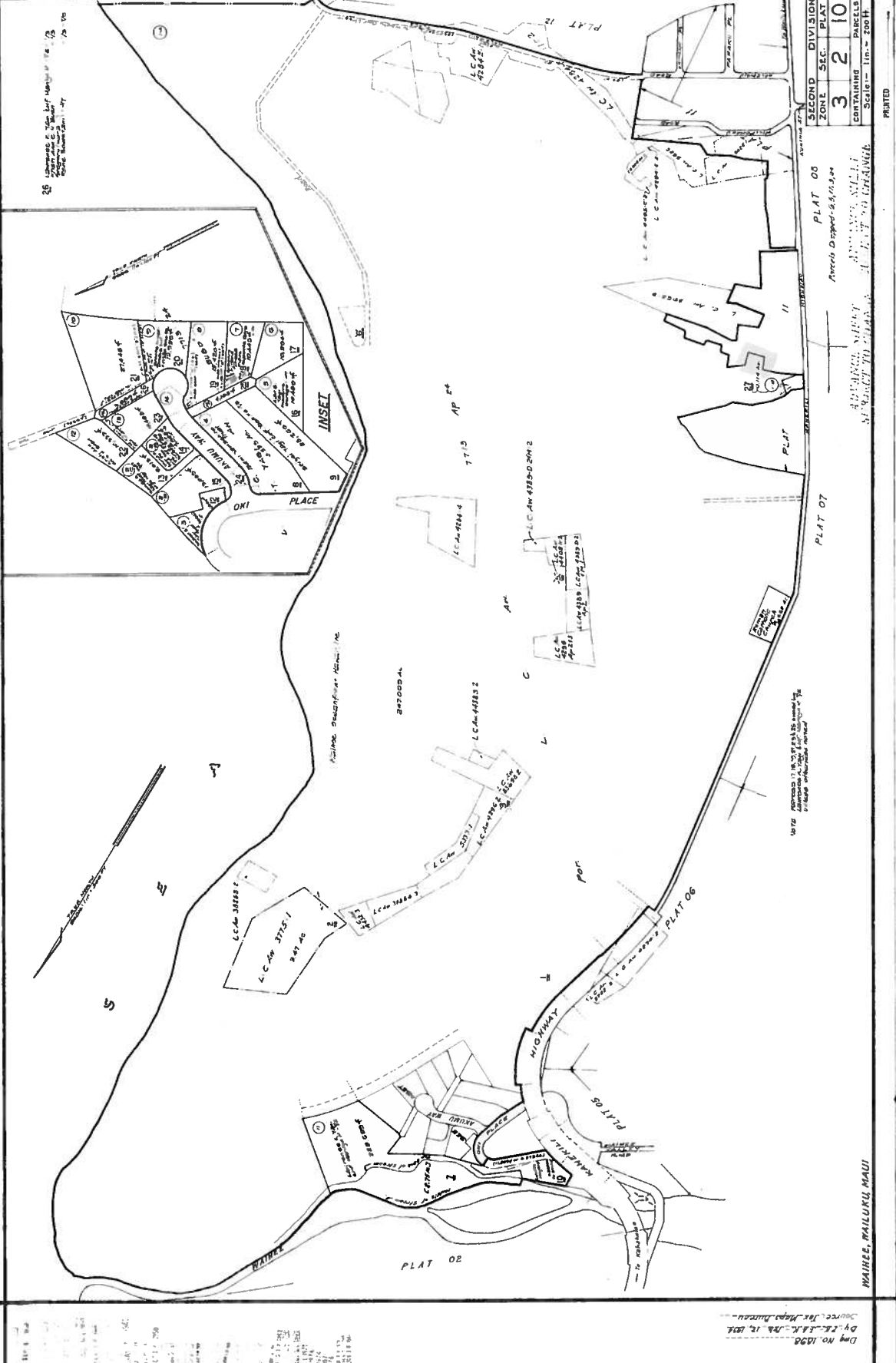
KOLOPOLE, WAHIEE, MAUI, HAWAII

This work was prepared by me
or under my direct supervision.
VALERA, INC.


Edgardo V. Valera Exp. 4/08
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 5076
Land Court Surveyor Certificate No.216

LOT 1-A
TMC(2) 3-2-10:01
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EXHIBIT A



WAHEE, WAILUKU, MAUI